In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

No. 182

RETAIL CLERKS INTERNATIONAL ASSOCIATION, A.F.L., RETAIL CLERKS UNION, LOCAL 648 et al.,
Petitioners,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONERS' OBJECTION TO MOTION OF SAFEWAY STORES, INCORPORATED, FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN OPPOSITION TO PETITION.

Petitioners object to the motion of Safeway Stores, Incorporated (herein Safeway) for leave to file a brief as amicus curiae in opposition to the petition

for certiorari in this cause, and withhold their consent to the filing of such a brief for the following reasons:

(1) By its motion Safeway seeks leave to file a brief as amicus curiae prior to consideration of the petition for certiorari, without the consent and over the objection of one of the parties. Paragraph 1 of Rule 42 expressly states that under these circumstances "such motions are not favored". The rule is advised. The merits of the case are not before the court prior to allowance of the writ and the presentations of the parties with respect to the reasons for its allowance or denial are appropriately limited. In the absence of special or unusual circumstances, neither the court nor a party litigant against its objection should be burdened with the necessity of considering briefs of amicus curiae prior to allowance of the writ. No such special or unusual circumstances exist in this case and none are shown by Safeway's motion. The status of Safeway in relation to this case is precisely the same as, and in no way differs from, the status of the many other employers and unions who file charges with the National Labor Relations Board leading to judicial proceedings under the National Labor Relations Act, but who at no time are parties to such proceedings. Unless the rule is to be relaxed in favor of all such employers and unions, there are no valid grounds for special treatment in favor of Safeway. No legitimate interest of Safeway can or will be materially affected by a decision of the court to allow the writ and take up the review of the case on its merits. To view the matter otherwise would recognize that Safeway has a legit-

imate interest in preventing review of errors committed by the court below.

(2) There are no facts or questions of law relevant to consideration of the petition for certiorari which have not been or are not being presented to the court by the parties prior to its consideration of the petition for certiorari and none are shown in Safeway's motion. So far as they may be relevant to the question whether certiorari should be granted, the points listed under paragraph 3 of Safeway's motion have been or are being adequately presented to this court in the opinions of the court below, the petition for writ of certiorari, the brief for the National Labor Relations Board in opposition or petitioners' reply thereto. While cast by Safeway in the form of grounds for denial of the writ, all of these points in essence embody Safeway's contentions regarding the merits of the decision below. The granting of the motion would unavoidably invite needless discussion of the merits by Safeway and the parties litigant in advance of the case coming before the court for that purpose.

For the foregoing reasons petitioners respectfully submit that Safeway's motion should be denied.

Dated, August 27, 1954.

Respectfully submitted,

ROLAND C. DAVIS,
S. G. LIPPMAN,
J. ALBERT WOLL,
HERBERT S. THATCHER,
Counsel for Petitioners.